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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,227	01/26/2001	Frank Venegas JR.	IDS-11703/14	6935
25006	7590	10/29/2010	EXAMINER	
GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C			WENDELL, MARK R	
PO BOX 7021				
TROY, MI 48007-7021			ART UNIT	PAPER NUMBER
			3635	
			MAIL DATE	DELIVERY MODE
			10/29/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* FRANK VENEGAS, JR.

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Appeal 2010-004534  
Application 09/771,227  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and  
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1 to 14, 21 to 23 and 27 to 31. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

Claim 1 is illustrative:

1. A cart corral system comprising:
  - a first set of at least two spaced apart vertical rails;
  - a base support supporting said first set of vertical rails in an upright position; said base support extending between said first set of vertical rails;
  - at least two spaced apart horizontal rails removably engaged with said vertical rails and positioned above said base support [and forming an obtuse angle with said vertical rails];
  - each of said vertical and horizontal rails having an outer diameter and exterior profile;
  - a second base support supporting said second set of vertical rails in an upright position; said second base support extending between said second set of vertical rails;
  - removable and replaceable polymerized sheathing surrounding each of said vertical rails having an interior and exterior diameter, the interior diameter equal to or greater than the outer diameter of said vertical rails and extending the length of said vertical rails;
  - removable and replaceable polymerized sheathing surrounding each of said horizontal rails having an interior and exterior diameter, the interior diameter equal to or greater than the outer diameter of each of said horizontal rails and extending the length of said horizontal rails; and
  - separable means for attaching said horizontal rails to said vertical rails.

Appellant appeals the following rejections:

1. Claims 1 to 3, 8 to 11, 13, 14, 21 to 23, and 27 to 31 under 35 U.S.C. § 103(a) as being unpatentable over Ulmer (US 4,609,183, issued Sep. 2, 1986) in view of Savino (US 4,236,697, issued Dec. 2, 1980).
2. Claims 4 to 7 and 12 under 35 U.S.C. § 103(a) as unpatentable over Ulmer in view of Savino and Cruwell (US 5,201,426, issued Apr. 13, 1993).

### ISSUE

Did the Examiner err in rejecting the claims because Ulmer does not disclose removable and replaceable polymerized sheathing?

### ANALYSIS

The Appellant argues that Ulmer does not disclose a removable and replaceable polymerized sheathing. We agree. The Examiner states that the coating disclosed at column 3, lines 1 to 20 of Ulmer is a sheathing as claimed. Even if the Examiner is correct that Ulmer's coating can be considered a sheathing and that the coating is removable, the Ulmer coating is not replaceable. Although the Ulmer may be, as urged by the Examiner, removed by chipping, scraping or using a paint remover, Ulmer does not disclose that the same coating can be replaced. Rather, only a new coating can be formed by painting the Ulmer rails. As such, the coating is not removable and replaceable. In view of the foregoing, we will not sustain the rejection as it is directed to claim 1 and claims 2, 3 and 8 dependent thereon. We will also sustain the rejection as directed to claims 9, 21, 23, 27, 28, 29,

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30 and 31 and claims 10, 11, 13, 14, and 22, dependent thereon because these claims also recite a replaceable sheathing.

We will not sustain the Examiner's rejection of claims 4 to 7 and 12 because they depend on claims 1 and 9 and also require a replaceable sheathing.

#### DECISION

We reverse the Examiner's § 103 rejections.

#### ORDER

REVERSED

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